

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 985**

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**Introduced by Assembly Member Cooley**

February 22, 2013

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An act to amend *Sections 11363 and 16120 of, and to repeal Section 11403.01 of, the Welfare and Institutions Code, relating to CalWORKs public social services.*

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Cooley. ~~Aid to families with dependent children.~~ *Guardianship and adoption assistance.*

Existing law, through the Kinship Guardianship Assistance Payment Program (~~Kin-GAP~~) (*state-funded Kin-GAP*), which is a part of the CalWORKs program, provides ~~aid~~ *state-funded assistance* on behalf of eligible children who are placed in the home of a relative caretaker. Under existing law, *state-funded Kin-GAP aid* is provided on behalf of ~~any child under 18 years of age and to~~ any eligible youth under 21 years of age who meets specified requirements, including that *his or her Kin-GAP payments began after his or her 16th birthday* and he or she is completing secondary education or a program leading to an equivalent credential. Existing law also allows a nonminor *whose state-funded Kin-GAP payments began before his or her 16th birthday* to continue to receive Kin-GAP aid after his or her 18th birthday if the child continues to reside in the relative's home, remains otherwise eligible for Kin-GAP payments, and continues to attend high school or the equivalent level of vocational or technical training on a full-time basis, or continues to pursue a high school equivalency certificate, and the child may reasonably be expected to complete the educational or training

program or to receive a high school equivalency certificate before his or her 19th birthday.

*Existing law, through the Kinship Guardianship Assistance Payments for Children program (federally funded Kin-GAP), provides federally funded assistance on behalf of eligible children who are placed in the home of a relative caretaker. Under federal law, a child who is between 18 and 21 years of age is eligible for federally funded Kin-GAP assistance if he or she meets specified requirements, including that his or her federally funded Kin-GAP payments commenced after his or her 16th birthday.*

*This bill would ~~additionally~~ instead authorize a nonminor whose state-funded Kin-GAP payments began prior to his or her 16th birthday to receive state-funded Kin-GAP benefits if he or she is 21 years of age or younger and meets any of certain criteria, including, among others, that he or she attends a postsecondary institution of higher education or is employed at least 80 hours per month. The bill would also authorize a nonminor in high school or a General Education Development program to continue to receive aid if he or she is reasonably expected to complete the educational program by his or her 20th birthday. The bill would also authorize a youth who has attained 18 years of age while receiving federally funded Kin-GAP benefits and is no longer eligible for those federally funded benefits to receive Kin-GAP payments under the state program if the youth meets specified requirements. By expanding eligibility for state-funded Kin-GAP and increasing county responsibilities in administering the program, this bill would impose a state-mandated local program.*

*Existing law establishes the Adoption Assistance Program for the purpose of benefitting children residing in foster homes by providing the stability and security of permanent homes. Under existing law, a child who is between 18 and 21 years of age is eligible for the program if he or she was 16 years of age or older when the adoption assistance agreement became effective. Federal law similarly authorizes a child who is between 18 and 21 years of age to receive adoption assistance if adoption assistance began after the child reached 16 years of age.*

*This bill would authorize a child whose adoption assistance benefits began prior to his or her 16th birthday to receive state-funded adoption assistance until he or she is 21 years of age, if the child meets specified criteria.*

Existing law continuously appropriates moneys from the General Fund to defray a portion of county aid grant costs under the CalWORKs program.

This bill would declare that no appropriation would be made for purposes of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11363 of the Welfare and Institutions  
2     Code is amended to read:

3     11363. (a) Aid in the form of state-funded Kin-GAP shall be  
4     provided under this article on behalf of any child under 18 years  
5     of age and to any eligible youth under ~~19~~ 21 years of age as  
6     provided in Section 11403, who satisfies all of the following  
7     conditions:

8         (1) Has been adjudged a dependent child of the juvenile court  
9         pursuant to Section 300; or, ~~effective October 1, 2006,~~ a ward of  
10        the juvenile court pursuant to Section 601 or 602.

11       (2) Has been residing for at least six consecutive months in the  
12       approved home of the prospective relative guardian while under  
13       the jurisdiction of the juvenile court or a voluntary placement  
14       agreement.

15       (3) Has had a kinship guardianship established pursuant to  
16       Section 360 or 366.26.

17       (4) Has had his or her dependency jurisdiction terminated after  
18       January 1, 2000, pursuant to Section 366.3, or his or her wardship  
19       terminated pursuant to subdivision (d) of Section 728, concurrently  
20       or subsequently to the establishment of the kinship guardianship.

21       (b) If the conditions specified in subdivision (a) are met and,  
22       subsequent to the termination of dependency jurisdiction, any  
23       parent or person having an interest files with the juvenile court a

1 petition pursuant to Section 388 to change, modify, or set aside an  
2 order of the court, Kin-GAP payments shall continue unless and  
3 until the juvenile court, after holding a hearing, orders the child  
4 removed from the home of the guardian, terminates the  
5 guardianship, or maintains dependency jurisdiction after the court  
6 concludes the hearing on the petition filed under Section 388.

7 (c) A child or nonminor former dependent or ward shall be  
8 eligible for Kin-GAP payments if he or she meets one of the  
9 following age criteria:

10 (1) He or she is under 18 years of age.

11 (2) He or she is under 21 years of age and has a physical or  
12 mental disability that warrants the continuation of assistance.

13 ~~(3) Through December 31, 2011, he or she satisfies the~~  
14 ~~conditions of Section 11403, and on and after January 1, 2012, he~~  
15 ~~or she satisfies the conditions of Section 11403.01.~~

16 ~~(4)~~

17 ~~(3) He or she satisfies the conditions as described in either~~  
18 ~~paragraph (1) or (2) of subdivision (d).~~

19 ~~(d) Commencing January 1, 2012, state-funded Kin-GAP~~  
20 ~~payments shall continue for youths who have attained 18 years of~~  
21 ~~age and who are under 19 years of age, if they reached 16 years~~  
22 ~~of age before the Kin-GAP negotiated agreement payments~~  
23 ~~commenced, and as described in Section 10103.5. Effective January~~  
24 ~~1, 2013, Kin-GAP payments shall continue for youths who have~~  
25 ~~attained 18 years of age and are under 20 years of age, if they~~  
26 ~~reached 16 years of age before the Kin-GAP negotiated agreement~~  
27 ~~payments commenced, and as described in Section 10103.5.~~  
28 ~~Effective January 1, 2014, Kin-GAP~~

29 ~~(d) (1) Kin-GAP payments shall continue for youths who have~~  
30 ~~attained 18 years of age and are under 21 years of age, if they~~  
31 ~~reached 16 years of age before the Kin-GAP negotiated agreement~~  
32 ~~payments commenced. To be eligible for continued payments, the~~  
33 ~~youth shall satisfy the relative guardian continues to be responsible~~  
34 ~~for the support of the youth and the youth meets one or more of~~  
35 ~~the conditions specified in paragraphs (1) to (5), inclusive, of~~  
36 ~~subdivision (b) of Section 11403.~~

37 ~~(2) A youth who has attained 18 years of age while receiving~~  
38 ~~federally funded Kin-GAP benefits pursuant to Article 4.7~~  
39 ~~(commencing with Section 11385), but is no longer eligible for~~  
40 ~~benefits under that program, shall be eligible for benefits under~~

1 *this section until the youth attains 21 years of age if all of the*  
2 *following conditions are met:*

3 *(A) The youth's relationship to the kinship guardian is defined*  
4 *in paragraph (1) of subdivision (c) of Section 11391.*

5 *(B) The youth was under 16 years of age at the commencement*  
6 *of the Kin-GAP payments under Article 4.7 (commencing with*  
7 *Section 11385) and does not have a mental or physical disability*  
8 *that warrants the continuation of assistance.*

9 *(C) The guardian continues to be responsible for the support*  
10 *of the youth.*

11 *(D) The youth meets one or more of the conditions of eligibility*  
12 *described in paragraphs (1) to (5), inclusive, of subdivision (b) of*  
13 *Section 11403.*

14 *(e) Termination of the guardianship with a kinship guardian*  
15 *shall terminate eligibility for Kin-GAP unless the conditions in*  
16 *Section 11403 apply; provided, however, that if an alternate*  
17 *guardian or coguardian is appointed pursuant to Section 366.3 who*  
18 *is also a kinship guardian, the alternate or coguardian shall be*  
19 *entitled to receive Kin-GAP on behalf of the child pursuant to this*  
20 *article. A new period of six months of placement with the alternate*  
21 *guardian or coguardian shall not be required if that alternate*  
22 *guardian or coguardian has been assessed pursuant to Sections*  
23 *361.3 and 361.4 and the court terminates dependency jurisdiction.*

24 *SEC. 2. Section 11403.01 of the Welfare and Institutions Code*  
25 *is repealed.*

26 ~~11403.01.— On and after January 1, 2012, a nonminor who is~~  
27 ~~receiving Kin-GAP benefits under Article 4.5 (commencing with~~  
28 ~~Section 11360) or Article 4.7 (commencing with Section 11385)~~  
29 ~~and whose Kin-GAP payments began prior to the child's 16th~~  
30 ~~birthday and who is receiving aid pursuant to those articles, and~~  
31 ~~who is attending high school or the equivalent level of vocational~~  
32 ~~or technical training on a full-time basis, or is in the process of~~  
33 ~~pursuing a high school equivalency certificate, prior to his or her~~  
34 ~~18th birthday, may continue to receive aid under those articles~~  
35 ~~following his or her 18th birthday so long as the child continues~~  
36 ~~to reside in the relative's home, remains otherwise eligible for~~  
37 ~~Kin-GAP payments, and continues to attend high school or the~~  
38 ~~equivalent level of vocational or technical training on a full-time~~  
39 ~~basis, or continues to pursue a high school equivalency certificate,~~  
40 ~~and the child may reasonably be expected to complete the~~

~~educational or training program or to receive a high school equivalency certificate, before his or her 19th birthday. Aid shall be provided to an individual pursuant to this section provided that both the individual and the agency responsible for the related guardianship placement have signed a mutual agreement, if the individual is capable of making an informed agreement, documenting the continued need for out-of-home placement.~~

*SEC. 3. Section 16120 of the Welfare and Institutions Code is amended to read:*

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) to (l), inclusive, are met or if the conditions specified in subdivision (m) are met.

(a) It has been determined that the child cannot or should not be returned to the home of his or her parents as evidenced by a petition for termination of parental rights, a court order terminating parental rights, or a signed relinquishment, or, in the case of a tribal customary adoption, if the court has given full faith and credit to a tribal customary adoption order as provided for pursuant to paragraph (2) of subdivision (e) of Section 366.26, or, in the case of a nonminor dependent the court has dismissed dependency or transitional jurisdiction subsequent to the approval of the nonminor dependent, adoption petition pursuant to subdivision (f) of Section 366.31.

(b) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability, as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care, as described in Section 11464.

1 (c) The need for an adoption subsidy is evidenced by an  
2 unsuccessful search for an adoptive home to take the child without  
3 financial assistance, as documented in the case file of the  
4 prospective adoptive child. The requirement for this search shall  
5 be waived when it would be against the best interest of the child  
6 because of the existence of significant emotional ties with  
7 prospective adoptive parents while in the care of these persons as  
8 a foster child.

9 (d) The child satisfies any of the following criteria:

10 (1) He or she is under 18 years of age.

11 (2) He or she is under 21 years of age and has a mental or  
12 physical handicap that warrants the continuation of assistance.

13 ~~(3) Effective January 1, 2012, he or she is under 19 years of~~  
14 ~~age, effective January 1, 2013, he or she is under 20 years of age,~~  
15 ~~and effective January 1, 2014, he or she is under 21 years of age~~  
16 ~~and as described in Section 10103.5, and has attained 16 years of~~  
17 ~~age before the adoption assistance agreement became effective,~~  
18 ~~and one or more of the conditions specified in paragraphs (1) to~~  
19 ~~(5), inclusive, of subdivision (b) of Section 11403 applies.~~

20 *(3) For federally funded Adoption Assistance Program benefits,*  
21 *he or she has attained 18 years of age and is under 21 years of*  
22 *age, attained 16 years of age before the adoption assistance*  
23 *agreement became effective, and meets one or more of the*  
24 *conditions of eligibility described in paragraphs (1) to (5),*  
25 *inclusive, of subdivision (b) of Section 11403.*

26 *(4) For state-funded Adoption Assistance Program benefits, he*  
27 *or she has attained 18 years of age and is under 21 years of age,*  
28 *and meets one or more of the conditions of eligibility described in*  
29 *paragraphs (1) to (5), inclusive, of subdivision (b) of Section*  
30 *11403.*

31 (e) The adoptive family is responsible for the child pursuant to  
32 the terms of an adoptive placement agreement or a final decree of  
33 adoption and has signed an adoption assistance agreement.

34 (f) The adoptive family is legally responsible for the support of  
35 the child and the child is receiving support from the adoptive  
36 parent.

37 (g) The department or the county responsible for determining  
38 the child's Adoption Assistance Program eligibility status and for  
39 providing financial aid, and the prospective adoptive parent, prior  
40 to or at the time the adoption decree is issued by the court, have

1 signed an adoption assistance agreement that stipulates the need  
2 for, and the amount of, Adoption Assistance Program benefits.

3 (h) The prospective adoptive parent or any adult living in the  
4 prospective adoptive home has completed the criminal background  
5 check requirements pursuant to Section 671(a)(20)(A) and (C) of  
6 Title 42 of the United States Code.

7 (i) To be eligible for state funding, the child is the subject of an  
8 agency adoption, as defined in Section 8506 of the Family Code,  
9 and was any of the following:

10 (1) Under the supervision of a county welfare department as  
11 the subject of a legal guardianship or juvenile court dependency.

12 (2) Relinquished for adoption to a licensed California private  
13 or public adoption agency, or another public agency operating a  
14 Title IV-E program on behalf of the state, and would have  
15 otherwise been at risk of dependency as certified by the responsible  
16 public child welfare agency.

17 (3) Committed to the care of the department pursuant to Section  
18 8805 or 8918 of the Family Code.

19 (4) The child is an Indian child and the subject of an order of  
20 adoption based on tribal customary adoption of an Indian child,  
21 as described in Section 366.24. Notwithstanding Section 8600.5  
22 of the Family Code, for purposes of this subdivision a tribal  
23 customary adoption shall be considered an agency adoption.

24 (j) To be eligible for federal funding, in the case of a child who  
25 is not an applicable child for the federal fiscal year as defined in  
26 subdivision (n), the child satisfies any of the following criteria:

27 (1) Prior to the finalization of an agency adoption, as defined  
28 in Section 8506 of the Family Code, or an independent adoption,  
29 as defined in Section 8524 of the Family Code, is filed, the child  
30 has met the requirements to receive federal supplemental security  
31 income benefits pursuant to Subchapter 16 (commencing with  
32 Section 1381) of Chapter 7 of Title 42 of the United States Code,  
33 as determined and documented by the federal Social Security  
34 Administration.

35 (2) The child was removed from the home of a specified relative  
36 and the child would have been AFDC eligible in the home of  
37 removal according to Section 606(a) or 607 of Title 42 of the  
38 United States Code, as those sections were in effect on July 16,  
39 1996, in the month of the voluntary placement agreement or in the  
40 month court proceedings are initiated to remove the child, resulting



1 in a judicial determination that continuation in the home would be  
2 contrary to the child's welfare. The child must have been living  
3 with the specified relative from whom he or she was removed  
4 within six months of the month the voluntary placement agreement  
5 was signed or the petition to remove was filed.

6 (3) The child was voluntarily relinquished to a licensed public  
7 or private adoption agency, or another public agency operating a  
8 Title IV-E program on behalf of the state, and there is a petition  
9 to the court to remove the child from the home within six months  
10 of the time the child lived with a specified relative and a subsequent  
11 judicial determination that remaining in the home would be  
12 contrary to the child's welfare.

13 (4) Title IV-E foster care maintenance was paid on behalf of  
14 the child's minor parent and covered the cost of the minor parent's  
15 child while the child was in the foster family home or child care  
16 institution with the minor parent.

17 (5) The child is an Indian child and the subject of an order of  
18 adoption based on tribal customary adoption of an Indian child,  
19 as described in Section 366.24.

20 (k) To be eligible for federal funding, in the case of a child who  
21 is an applicable child for the federal fiscal year, as defined in  
22 subdivision (n), the child meets any of the following criteria:

23 (1) At the time of initiation of adoptive proceedings was in the  
24 care of a public or licensed private child placement agency or  
25 Indian tribal organization pursuant to either of the following:

26 (A) An involuntary removal of the child from the home in  
27 accordance with a judicial determination to the effect that  
28 continuation in the home would be contrary to the welfare of the  
29 child.

30 (B) A voluntary placement agreement or a voluntary  
31 relinquishment.

32 (2) He or she meets all medical or disability requirements of  
33 Title XVI with respect to eligibility for supplemental security  
34 income benefits.

35 (3) He or she was residing in a foster family home or a child  
36 care institution with the child's minor parent, and the child's minor  
37 parent was in the foster family home or child care institution  
38 pursuant to either of the following:

39 (A) An involuntary removal of the child from the home in  
40 accordance with a judicial determination to the effect that

1 continuation in the home would be contrary to the welfare of the  
2 child.

3 (B) A voluntary placement agreement or voluntary  
4 relinquishment.

5 (4) The child is an Indian child and the subject of an order of  
6 adoption based on tribal customary adoption of an Indian child,  
7 as described in Section 366.24.

8 (5) The nonminor dependent, as described in subdivision (v) of  
9 Section 11400, is the subject of an adoption pursuant to subdivision  
10 (f) of Section 366.31.

11 (l) The child is a citizen of the United States or a qualified alien  
12 as defined in Section 1641 of Title 8 of the United States Code. If  
13 the child is a qualified alien who entered the United States on or  
14 after August 22, 1996, and is placed with an unqualified alien, the  
15 child must meet the five-year residency requirement pursuant to  
16 Section 673(a)(2)(B) of Title 42 of the United States Code, unless  
17 the child is a member of one of the excepted groups pursuant to  
18 Section 1612(b) of Title 8 of the United States Code.

19 (m) A child shall be eligible for Adoption Assistance Program  
20 benefits if the following conditions are met:

21 (1) The child received Adoption Assistance Program benefits  
22 with respect to a prior adoption and the child is again available for  
23 adoption because the prior adoption was dissolved and the parental  
24 rights of the adoptive parents were terminated or because the  
25 child's adoptive parents died and the child meets the special needs  
26 criteria described in subdivisions (a) to (c), inclusive.

27 (2) To receive federal funding, the citizenship requirements in  
28 subdivision (l).

29 (n) (1) Except as provided in this subdivision, "applicable child"  
30 means a child for whom an adoption assistance agreement is  
31 entered into under this section during any federal fiscal year  
32 described in this subdivision if the child attained the applicable  
33 age for that federal fiscal year before the end of that federal fiscal  
34 year.

35 (A) For federal fiscal year 2010, the applicable age is 16 years.

36 (B) For federal fiscal year 2011, the applicable age is 14 years.

37 (C) For federal fiscal year 2012, the applicable age is 12 years.

38 (D) For federal fiscal year 2013, the applicable age is 10 years.

39 (E) For federal fiscal year 2014, the applicable age is eight years.

40 (F) For federal fiscal year 2015, the applicable age is six years.

1 (G) For federal fiscal year 2016, the applicable age is four years.

2 (H) For federal fiscal year 2017, the applicable age is two years.

3 (I) For federal fiscal year 2018 and thereafter, any age.

4 (2) Beginning with the 2010 federal fiscal year, the term  
5 “applicable child” shall include a child of any age on the date on  
6 which an adoption assistance agreement is entered into on behalf  
7 of the child under this section if the child meets both of the  
8 following criteria:

9 (A) He or she has been in foster care under the responsibility  
10 of the state for at least 60 consecutive months.

11 (B) He or she meets the requirements of subdivision (k).

12 (3) Beginning with the 2010 federal fiscal year, an applicable  
13 child shall include a child of any age on the date that an adoption  
14 assistance agreement is entered into on behalf of the child under  
15 this section, without regard to whether the child is described in  
16 paragraph (2), if the child meets all of the following criteria:

17 (A) He or she is a sibling of a child who is an applicable child  
18 for the federal fiscal year, under subdivision (n) or paragraph (2).

19 (B) He or she is to be placed in the same adoption placement  
20 as an “applicable child” for the federal fiscal year who is their  
21 sibling.

22 (C) He or she meets the requirements of subdivision (k).

23 ~~SECTION 1. Section 11403.01 of the Welfare and Institutions~~  
24 ~~Code is amended to read:~~

25 ~~11403.01. (a) A nonminor who is receiving Kin-GAP benefits~~  
26 ~~under Article 4.5 (commencing with Section 11360) or Article 4.7~~  
27 ~~(commencing with Section 11385) and whose Kin-GAP payments~~  
28 ~~began prior to the child’s 16th birthday and who is receiving aid~~  
29 ~~pursuant to those articles, may continue to receive aid pursuant to~~  
30 ~~those articles if the nonminor is 21 years of age or younger and~~  
31 ~~meets any one of the following requirements:~~

32 ~~(1) Attends high school or the equivalent level of vocational or~~  
33 ~~technical training on a full-time basis, or is in the process of~~  
34 ~~pursuing a high school equivalency certificate, prior to his or her~~  
35 ~~18th birthday, if the child continues to reside in the relative’s home,~~  
36 ~~remains otherwise eligible for Kin-GAP payments, and continues~~  
37 ~~to attend high school or a General Education Development (GED)~~  
38 ~~program on a full-time basis, or continues to pursue a high school~~  
39 ~~equivalency certificate, and the child may reasonably be expected~~

1 to complete the educational program or to receive a high school  
2 equivalency certificate, before his or her 20th birthday.

3 ~~(2) Attends a postsecondary institution of higher education or~~  
4 ~~an educational program leading to an equivalent credential.~~

5 ~~(3) Is enrolled in an institution that provides vocational~~  
6 ~~education.~~

7 ~~(4) Participates in a program or activity designed to promote,~~  
8 ~~or remove barriers to, employment.~~

9 ~~(5) Is employed at least 80 hours per month.~~

10 ~~(6) Is unable to do any of the activities described in paragraphs~~  
11 ~~(1) to (5), inclusive, because of a medical condition, and that~~  
12 ~~inability is documented by regularly updated information in the~~  
13 ~~case plan of the nonminor.~~

14 ~~(b) Aid shall be provided to an individual pursuant to this section~~  
15 ~~if the individual and the agency responsible for the related~~  
16 ~~guardianship placement have signed a mutual agreement, if the~~  
17 ~~individual is capable of making an informed agreement,~~  
18 ~~documenting the continued need for out-of-home placement.~~

19 ~~SEC. 2.~~

20 *SEC. 4.* No appropriation pursuant to Section 15200 of the  
21 Welfare and Institutions Code shall be made for the purposes of  
22 this act.

23 ~~SEC. 3.~~

24 *SEC. 5.* If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.